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Constitutional Law—Jurisdiction of State Court not Pre-empted by National Housing Act

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guesswork.⁵⁷ However, the law on the subject is clear, statutorily⁵⁸ and judicially.⁵⁹ The guesswork lies in interpreting each case by its particular facts. This disadvantage, if it is one, can only be explained as another cost of our democratic legal system.

Jurisdiction Of State Court Not Pre-Empted By National Housing Act

Promoters of a corporation are liable to the corporation, when they perform a transaction out of which they obtain a profit, if at the time of the transaction, it is definitely intended or contemplated by the promoters that stock will be sold to the uninformed public.⁶⁰

Plaintiffs in *Northridge Cooperative v. 32nd Avenue Construction Corporation*,⁶¹ brought actions in behalf of corporations of which they were shareholders, against the promoters of the enterprises for an accounting to the corporations of profits made by the promoters before the plaintiffs subscribed to the stock of the corporations. The basic issue was whether the National Housing Act⁶² precluded the prosecution of an action of this nature in the state courts.

The federal government is supreme when it is acting within the limits set by the Constitution.⁶³ States are sovereign in our system of government except where Congress takes away their authority in the exercise of its delegated powers.⁶⁴ "If the congressional enactment occupies the field, its control by the Supremacy Clause supersedes or in the current phrase, pre-empts state power."⁶⁵ Congress may occupy only a limited portion of the field if it wishes.⁶⁶

In the absence of specific congressional indication that federal legislation is to be exclusive,⁶⁷ the courts, in a case of this nature, have to determine what the

57. A golf club's characteristics were compared with its public characteristics, the court deciding that the club was private. See *Delaney v. Central Valley Golf Club*, *supra* note 56.

58. N.Y. CIVIL RIGHTS LAW §40.

59. *Norman v. City Island Beach Co.*, 126 Misc. 335, 213 N.Y.S. 379 (Sup. Ct. 1926); *People v. King*, 10 N.Y. 418, 18 N.E. 245 (1888); *Camp of the Pines v. New York Times Co.*, 184 Misc. 389, 53 N.Y.S.2d 475 (Sup. Ct. 1945); *Pickett v. Kuchan*, 323 Ill. 138, 153 N.E. 667 (1926); *Balden v. Grand Rapids Operating Corp.*, 239 Mich. 318, 214 N.W. 241 (1927).

60. The leading case is *Erlanger v. New Sombrero Phosphates Company*, 3 App. Cas. 1218 (1878); 1 FLETCHER'S CYCLOPEDIA CORPORATION, §§192, 196 (Revised and permanent edition, 1931).

61. *Northridge Cooperative v. 32nd Avenue Construction Corporation*, 2 N.Y.2d 514, 161 N.Y.S.2d 404 (1957).

62. National Housing Act, 48 STAT. 1246 (1934), as amended 12 U.S.C. §§1713(b) (2), 1715(e).

63. U.S. CONST. art. VI.

64. *Parker v. Brown*, 317 U.S. 341 (1943).

65. *Auto Workers v. Wisconsin Board*, 351 U.S. 266, 271 (1956).

66. *Kelly v. Washington*, 302 U.S. 1 (1937).

67. *Andreance v. Lorentzen*, 60 N.Y.S.2d 834 (Sup. Ct. 1946).

congressional intention was, whether the Congress intended to pre-empt the entire field. The court may look to see if the federal regulations is so ". . . pervasive as to make reasonable the inference that Congress left no room for the states to supplement it,"⁶⁸ or whether the legislation touches a field in which the federal interest is so dominant.⁶⁹

Defendants, in the action, argued that the Federal Housing Authority, an administrative agency of the United States, administering the National Housing Act, was the watchdog to protect the tenants in such a project. Thus, it was argued, that the statutory scheme demonstrated that Congress intended to have the F.H.A. supervise the project, completely control it and protect the tenant and thus pre-empt the field.

The Court, in upholding the jurisdiction of the New York courts in this case, pointed to the functions given the administrator by the National Housing Act and ruled that it was: ". . . no duty of his to exercise benevolent supervision over real estate developers."⁷⁰ The administrator is but a negotiator and agent for the Government to protect the Treasury by approving only financially sound mortgage risks and to protect veterans and other tenants from being victimized by exorbitant rents as long as F.H.A. loans were on the property. The administrator is not a judge and not a guardian of tenants. Congressional intention was not to have the administrator as a judge for there was no Federal forum provided for in the Act in which equitable issues of this nature could be decided.

CONTRACTS

Failure To Furnish Sample As Breach Of Contract

Where a sale is made subject to the buyer's satisfaction his approval becomes a condition precedent to his obligation to accept the merchandise.¹ The power to withhold approval is absolute where the object of the contract is to "gratify taste, serve personal convenience, or satisfy individual preference."² However commercial contracts in this state, where the suitability of the goods is a matter of "mechanical fitness, utility, or marketability," are subject to the rule

68. *Rice v. Santa Fe Elevator Corporation*, 331 U.S. 218, 230 (1947).

69. *Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

70. *Northridge Cooperative v. 32nd Avenue Construction Corporation*, 2 N.Y.2d 514, 533, 161 N.Y.S.2d 404, 416 (1957).

1. *Doll v. Noble*, 116 N.Y. 230, 22 N.E. 406 (1889); *Duplex Safety Boiler Co. v. Garden*, 101 N.Y. 387, 4 N.E. 749 (1886); *Atlas Shoe Co. v. Lewis*, 202 App. Div. 244, 195 N.Y. Supp. 618 (3rd Dep't 1922).

2. *Duplex Safety Boiler Co. v. Garden*, *supra* note 1.